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WITHROW & TERRANOVA, P.L.L.C.			JABR, FADEY S	
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CARY, NC 27512			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,751	Applicant(s) VAIDYANATHAN ET AL.	
	Examiner Fadey S. Jabr	Art Unit 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims **1-40** remain pending and are again presented for examination.

Response to Arguments

1. Applicant's arguments filed 23 May 2006 have been fully considered and are persuasive. The finality of the previous Office Action has been withdrawn.
2. Applicant's arguments, see pages 2-6, filed 23 May 2006, with respect to the rejection(s) of claim(s) 1, 12, 23 and 33 under U.S.C. 103 (a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references. The new references more closely represent the Applicant's invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims **1, 12, 23 and 33** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claims 1, 12, 23 and 33**, the recitations “paying the first user the reseller commission set for the file” and “paying the content owner a payment...” are vague and indefinite. It is unclear to the Office who must pay the first user the reseller commission and who must pay the content owner a payment based on the retail price minus the reseller commission. Appropriate correction is required in the indicated claims and any subsequent claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **1, 3-4, 10-11, 12 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1.

As per **Claims 1 and 12**, Vestergaard et al. discloses a method for providing digital content comprising:

- allowing a content owner to post a file on the marketplace for access by users by (0016 and 0090),
 - providing information about the file (0093);
 - setting a retail price that users will be charged for downloading the file (0094),and

- setting a reseller commission for the file (0152);
- allowing a second user to search the files posted on the digital marketplace for one to download (0105);
- if the second user selects a particular file to download, charging the user the retail price set for the file (0094-0104);

Vestergaard et al. fails to explicitly disclose allowing a first user to search for the files posted on the digital marketplace for one to resell on a third party website. However, Vestergaard et al. discloses a MPE Distributor Editor, which allows distributors to select which tracks they want to sell and therefore process (0157-0162; see also Figure 11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a distributor to choose which tracks they would want to sell, because it improves the flexibility of the distributor in deciding which files they want to sell on their marketplace.

Vestergaard et al. fails to explicitly disclose if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission. Moreover, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying distributor for distributing the file, while also paying the content owner a percentage for the content, because the marketplace is an e-

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commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

As per Claims 3, Vestergaard et al. fails to explicitly disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying the distributor a percentage of the gross revenue, while also paying the content owner a percentage of the remaining portion of the gross revenue, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

As per Claim 4 and 15, Vestergaard et al. fails to explicitly disclose allowing the content owner to set the retail price and the reseller commission both positively and negatively. However, Vestergaard et al. discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing the content owner to modify the percentage of the gross revenue the distributor receives, because it provides the content owner

the flexibility in adjusting the amount of revenue the content owner decides to retain for themselves.

As per **Claim 10**, Vestergaard et al. discloses implementing the digital marketplace as a website on a network (0042).

As per **Claim 11**, Vestergaard et al. discloses implementing the digital marketplace as a peer-to-peer network (0043).

7. Claims **2, 13-14, 21-24, and 33-34** rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1.

As per **Claims 2 and 13**, Vestergaard et al. fails to explicitly disclose allowing the content owner to monitor download statistics for the file the content owner posted and to change the retail price and the reseller commission for the file in real-time. However, Eaglen et al. teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard et al. also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where

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the change in price also changes the distributor compensation. Eaglen et al. provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claim 14, 24 and 34**, Vestergaard et al. fails to explicitly disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying the distributor a percentage of the gross revenue, while also paying the content owner a percentage of the remaining portion of the gross revenue, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

As per **Claim 21**, Vestergaard et al. discloses implementing the digital marketplace as a website on a network (0042).

As per **Claim 22**, Vestergaard et al. discloses implementing the digital marketplace as a peer-to-peer network (0043).

As per Claims 23 and 33, Vestergaard et al. discloses a method for providing digital content comprising:

- allowing a content owner to post a file on the marketplace for access by users by (0016 and 0090),
 - providing information about the file (0093);
 - setting a retail price that users will be charged for downloading the file (0094),
and
 - setting a reseller commission for the file (0152);
- allowing a second user to search the files posted on the digital marketplace for one to download (0105);
- if the second user selects a particular file to download, charging the user the retail price set for the file (0094-0104);
- allowing the content owner to edit the file information (0093).

Vestergaard et al. fails to explicitly disclose allowing a first user to search for the files posted on the digital marketplace for one to resell on a third party website. However, Vestergaard et al. discloses a MPE Distributor Editor, which allows distributors to select which tracks they want to sell and therefore process (0157-0162; see also Figure 11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a distributor to choose which tracks they would want to sell, because it improves the flexibility of the distributor in deciding which files they want to sell on their marketplace.

Vestergaard et al. fails to explicitly disclose if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission. Moreover, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying distributor for distributing the file, while also paying the content owner a percentage for the content, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

Vestergaard et al. fails to explicitly disclose allowing the content owner to change the retail price and the reseller commission for the file in real-time. However, Eaglen et al. teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard et al. also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen et al. provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

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8. Claims **5, 16, 25, 30- 32 and 35** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Spagna et al., U.S. Patent No. 6,587,837 B1.

As per **Claims 5, 16, 25, 30 and 35**, Vestergaard et al. discloses three pricing models in which the digital files can be distributed through: a Free model, a Pay model and finally a Sponsored model (0058). Vestergaard et al. fails to disclose a subscription plan model, a broadcast model, a private download model, a donation, an infomercial model, and a pay-per-download model. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claim 31**, Vestergaard et al. discloses implementing the digital marketplace as a website on a network (0042).

As per **Claim 32**, Vestergaard et al. discloses implementing the digital marketplace as a peer-to-peer network (0043).

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9. Claims **6 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Shear et al., U.S. Patent No. 6,112,181.

As per **Claims 6 and 17**, Vestergaard et al. fails to explicitly disclose requesting the first user to enter display options for the search. However, Vestergaard et al. discloses a search engine for searching for digital files, which then allows the user to download the file (0105). Shear et al. also teaches a matching and classification authority in which a distributor can query the authority for content that matches their search (C. 60, lines 10-50; C. 68, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include a search engine to enable the distributor to search for content as taught by Shear et al., because it provides the distributor with digital files that closely match their search criteria.

10. Claims **7 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al. Pub. No. US2002/0146122 A1 in view of Shear et al., U.S. Patent No. 6,112,181 as applied to claims, 1 and 12 above, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1.

As per **Claims 7 and 18**, Vestergaard et al. discloses a several different pricing options, one being a Free file pricing model (0058). Vestergaard et al. also discloses displaying to the user whether the digital file is free or not (0108). Vestergaard et al. fails to disclose where the

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pricing options displayed are pay-per-download or files listed as resalable. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

11. Claims **8-9 and 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claims 8-9 and 19-20**, Vestergaard et al. fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. However, Ferguson et al. teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson et al., because it allows for quick search through large collections of files (C. 10, lines 64-65).

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12. Claims **26-27 and 36-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claims 23 and 33 above, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1, and further in view of Shear et al., U.S. Patent No. 6,112,181.

As per **Claims 26 and 36**, Vestergaard et al. fails to explicitly disclose requesting the first user to enter display options for the search. However, Vestergaard et al. discloses a search engine for searching for digital files, which then allows the user to download the file (0105). Shear et al. also teaches a matching and classification authority in which a distributor can query the authority for content that matches their search (C. 60, lines 10-50; C. 68, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include a search engine to enable the distributor to search for content as taught by Shear et al., because it provides the distributor with digital files that closely match their search criteria.

As per **Claims 27 and 37**, Vestergaard et al. discloses a several different pricing options, one being a Free file pricing model (0058). Vestergaard et al. also discloses displaying to the user whether the digital file is free or not (0108). Vestergaard et al. fails to disclose where the pricing options displayed are pay-per-download or files listed as resalable. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard

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et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

13. Claims **28-29 and 38** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claims 23 and 33 above, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claims 28-29 and 38**, Vestergaard et al. fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. However, Ferguson et al. teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson et al., because it allows for quick search through large collections of files (C. 10, lines 64-65).

14. Claim **39** is rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claim 33 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claim 39**, Vestergaard et al. fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. However, Ferguson et al. teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson et al., because it allows for quick search through large collections of files (C. 10, lines 64-65).

15. Claim **40** is rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claim 33 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1.

As per **Claim 40**, Vestergaard et al. discloses three pricing models in which the digital files can be distributed through: a Free model, a Pay model and finally a Sponsored model (0058). Vestergaard et al. fails to disclose a subscription plan model, a broadcast model, a private download model, a donation, an infomercial model, and a pay-per-download model. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to

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modify the method of Vestergaard et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Fadey S Jabr
Examiner
Art Unit 3639

FSJ

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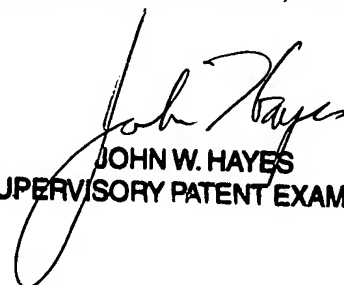
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JOHN W. HAYES
SUPERVISORY PATENT EXAMINER